

Attorneys for Claimant  
THADD BRUSSEAU

IN THE MATTER OF THE ) No. C05 4044 WHA  
COMPLAINT OF TUTOR- )  
SALIBA/KOCH/TIDEWATER, )  
JV, ) E-Filing case  
 )  
Plaintiff, ) **STIPULATION PRESERVING**  
 ) **TUTOR-SALIBA/KOCH/**  
 ) **TIDEWATER'S LIMITATION**  
For Exoneration from or Limitation ) **RIGHTS, LIFTING THE STAY**  
of Liability. ) **AGAINST STATE COURT**  
 ) **LITIGATION, AND ABATING**  
 ) **THE WITHIN LIMITATION**  
 ) **ACTION; ORDER THEREON**

### Stipulation Preserving Plaintiff's Limitation Rights and Lifting Stay

1 the marine injury involving their vessel, the barge *EM 1146* that occurred on or  
2 about July 30, 2004;

3  
4 AND WHEREAS Claimant THADD BRUSSEAU is the sole limitation  
5 claimant herein and wishes to prosecute his claim against Plaintiff TUTOR-  
6 SALIBA/ KOCH/TIDEWATER before a jury in the related action filed in the San  
7 Francisco Superior Court, entitled *Brusseau vs. Tutor-Saliba/Koch/Tidewater*, case  
8 No. 05-440193;  
9

10  
11 IT IS HEREBY STIPULATED AND AGREED, by the undersigned  
12 Plaintiff and Claimant, acting by and through their respective attorneys, that:

13  
14 (1) TUTOR-SALIBA/KOCH/TIDEWATER has the right to litigate the  
15 issue of whether it is entitled to limitation and/or exoneration from liability under  
16 the Act, and the issue of the proper value of the limitation fund in this Court, and  
17 this Court has exclusive jurisdiction to determine said issues, including, *inter alia*,  
18 the issue of the value of the limitation fund;  
19

20  
21 (2) Claimant will not seek a determination of the issues set forth in  
22 paragraph (1) above in any proceeding other than this case, and consents to waive  
23 any *res judicata* effect the decisions, rulings or judgments of any other forum might  
24 have on those issues, and further consents to waive the defense of issue preclusion  
25 with respect to all matters reserved for determination by this Court;  
26  
27  
28

1 (3) Claimant will not seek to enforce any judgment rendered in any  
 2 judicial forum, whether against Plaintiff or another person or entity entitled to seek  
 3 indemnity or contribution from Plaintiff by way of cross-claim or otherwise that  
 4 would expose TUTOR-SALIBA/KOCH/TIDEWATER to liability in excess of the  
 5 limitation fund until such time as this Court has adjudicated Plaintiff's right to limit  
 6 that liability;  
 7

8  
 9 (4) In the event this Court determines that TUTOR-SALIBA/KOCH/  
 10 TIDEWATER is entitled to limit its liability, Claimant will not seek to enforce any  
 11 judgment which would require Plaintiff to pay damages in excess of the limitation  
 12 fund; and,  
 13

14  
 15 (5) In the event this Court determines that TUTOR-SALIBA/KOCH/  
 16 TIDEWATER is entitled to limit its liability, any claim based upon fees and/or  
 17 costs awarded against Plaintiff and in favor of Claimant will have first priority  
 18 against the limitation fund.  
 19

20  
 21 THE ABOVE IS SO STIPULATED:  
 22

23 Dated: 12/8/05  
 24

McGuinn, Hillsman & Palefsky  
 Attorneys for Claimant  
 THADD BRUSSEAU

25  
 26 By:   
 27 JOHN R. HILLSMAN  
 28

1  
2 Dated: 12/9/05

Cox, Wootton, Griffin, Hansen  
& Poulos  
Attorneys for Plaintiff TUTOR-  
SALIBA/KOCH/TIDEWATER

6  
7 By: [Signature] for  
RICHARD C. WOOTTON

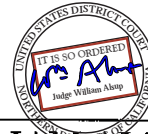
8  
9  
10 **ORDER**

11 THE PARTIES HAVING AGREED THERETO, AND GOOD CAUSE  
12 APPEARING THEREFOR, it is hereby ordered that the Monition issued by this  
13 Court on October 14, 2005 be modified so that:

- 14  
15 1) The injunction against State court litigation be and hereby is lifted;  
16  
17 2) The within action be and hereby is abated until such time as the action  
18 pending in San Francisco Superior Court under the title *Brusseau vs.*  
19 *Tutor-Saliba/Koch/Tidewater*, case No. 05-440193 is either tried to  
20  
21 final judgment, or otherwise resolved.

22 Counsel for plaintiff in this action shall submit a status report on *Brusseau v.*  
23 *Tutor-Saliba/Koch/Tidewater*, No. 05-440193, every three months from today's date.  
24 Additionally, this order pertains only to Flexifloat Barge EM1010, not barge EM1146, as stated  
25 mistakenly in the stipulation.

26 Dated: December 12, 2005



27 WILLIAM ALSUP,  
28 UNITED STATES DISTRICT JUDGE